First Student, Inc. *and* Oregon School Employees Association. Cases 36–CA–010762, 36–CA–010766, 36–CA–010767, 36–CA–010848, and 36–CA–010870

September 28, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

On December 7, 2011, Administrative Law Judge John J. McCarrick issued the attached decision. The Respondent filed exceptions and a supporting brief. The Acting General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.[2]

AMENDED REMEDY

In addition to the remedies provided in the judge's decision,[3] we shall order the Respondent to make unit employees whole for any loss of earnings and other benefits suffered as a result of its unilateral changes. This make-whole remedy applies to all unit employees who were employed at any time during the period when the annual wage increases at the Molalla, Lake Oswego, and Gresham facilities or the Lake Oswego monthly attendance bonuses were due and not granted. The make-whole remedy shall be computed in accordance with *Ogle Protection Services*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).[4]

ORDER

The National Labor Relations Board orders that the Respondent, First Student, Inc., Molalla, Lake Oswego, and Gresham, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees that they will not be granted step increases during contract negotiations.

(b) Telling employees that they will not be granted retroactive step increases if they engage in protected activities.

(c) Telling employees that monthly attendance bonuses will not be paid due to contract negotiations.

(d) Informing employees that only nonunion participants in its Retirement Savings Plan will receive an employer matching contribution.

(e) Failing and refusing to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate bargaining units below by:

(1) Failing and refusing to negotiate wages, benefits, and other economic matters in the Gresham bargaining unit unless and until agreement was reached on noneconomic issues.

(2) Failing or refusing to meet at reasonable times and/or places for bargaining with the Union concerning the Gresham unit and unilaterally canceling bargaining scheduled for June 21–23, 2011, for the Gresham unit.

(3) Unilaterally and without notice to and bargaining with the Union canceling or delaying annual wage or step increases for employees in the Lake Oswego and Gresham units during negotiations for initial collective-bargaining agreements.

(4) Unilaterally canceling or delaying annual wage or step increases for employees in the Molalla

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order to conform to the violations found and the Board's standard remedial language. We shall also substitute a new notice to conform to the recommended Order as modified. The new notice deletes the requirement that the Respondent post the notice in both English and Spanish, because no party requested a Spanish-language notice.

[3] In adopting the judge's recommendation that the certification year be extended at the Gresham facility, pursuant to *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), we clarify that the 1-year extension will commence when the Respondent begins to bargain in good faith with the Union.

We do not adopt the judge's remedy insofar as it provides for reinstatement and make-whole relief for employee Rhandy Villanueva. There is no such employee or allegation in this case, and this provision appears to be an inadvertent error.

[4] The judge, without discussion, ordered the Respondent to read the notice to employees. This appears to be an inadvertent error as this provision was neither included in the judge's remedy section nor referenced in his notice. In any event, the Respondent's unfair labor practices have not been shown to warrant this extraordinary remedy. Rather, we find that the Board's traditional remedies and the extension of the certification year for the Gresham unit are sufficient to remedy the Respondent's violations. See *Bruce Packing Co.*, 357 NLRB 1084, 1084 fn. 4 (2011); *First Legal Support Services*, 342 NLRB 350, 350 fn. 6 (2004). Therefore, we decline to order this additional remedy. For the same reason, we substitute a narrow cease-and-desist order for the broad order recommended by the judge.

unit during negotiations for a successor collective-bargaining agreement without bargaining to overall impasse on the entire agreement.

(5) Unilaterally and without notice and bargaining with the Union delaying payment of monthly attendance bonuses in the Lake Oswego unit.

(6) Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

The appropriate bargaining units are:

All full time and regular part time school bus operators and driver trainers employed by Respondent at its Molalla, Oregon, facility; but excluding all other employees, managers, technician in charge (mechanics), technicians (mechanics), clerical employees, and guards and supervisors as defined in the Act.

All full time and regular part time drivers employed out of Respondent's Lake Oswego, Oregon facility; but excluding all mechanics/technicians, office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act and all other employees.

All full time and regular part time bus drivers and driver trainers at Respondent's Gresham-Barlow School District Location; but excluding all other employees, including dispatchers, mechanic technicians, and guards, professional employees, and supervisors as defined in the Act.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the Molalla, Lake Oswego, and Gresham bargaining units concerning terms and conditions of employment and, if understandings are reached, embody the understandings in signed agreements.

(b) Make whole the unit employees at the Molalla, Lake Oswego, and Gresham facilities for any loss of earnings and other benefits suffered as a result of the unlawful unilateral changes in terms and conditions of employment, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(c) Furnish to the Union in a timely manner the information it requested between August 23, 2010, and April 17, 2011.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in Molalla, Lake Oswego, and Gresham, Oregon, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The Respondent shall also mail a copy of the notice to each bargaining unit employee who was laid off since July 1, 2010. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 1, 2010.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES EMPLOYEES THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell you that you will not be granted step increases during contract negotiations.

WE WILL NOT tell you that you will not be granted retroactive step increases if you engage in protected activities.

WE WILL NOT tell you that monthly attendance bonuses will not be paid due to contract negotiations.

WE WILL NOT inform employees that only nonunion participants in our Retirement Savings Plan will receive employer matching contributions.

WE WILL NOT fail and refuse to recognize and bargain in good faith with Oregon School Employees Association (the Union) as the exclusive collective-bargaining representative of the employees in the appropriate bargaining units below by:

Failing and refusing to negotiate wages, benefits, and other economic matters in the Gresham bargaining unit unless and until agreement was reached on noneconomic issues.

Failing or refusing to meet at reasonable times and places for bargaining with the Union concerning the Gresham unit and unilaterally canceling bargaining scheduled for June 21–23 for the Gresham unit.

Unilaterally and without notice and bargaining with the Union canceling or delaying annual wage or step increases for employees in the Lake Oswego and Gresham bargaining units during bargaining for initial collective-bargaining agreements.

Unilaterally canceling or delaying annual wage or step increases for employees in the Molalla unit during negotiation for a successor collective-bargaining agreement in the absence of overall impasse on the entire agreement.

Unilaterally and without notice and bargaining with the Union delaying payment of monthly attendance bonuses in the Lake Oswego bargaining unit.

Refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

The appropriate bargaining units are:

All full time and regular part time school bus operators and driver trainers employed by us at our Molalla, Oregon, facility; but excluding all other employees, managers, technician in charge (mechanics), technicians (mechanics), clerical employees, and guards and supervisors as defined in the Act.

All full time and regular part time drivers employed out of Respondent's Lake Oswego, Oregon facility; but excluding all mechanics/technicians, office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act and all other employees.

All full time and regular part time bus drivers and driver trainers at Respondent's Gresham-Barlow School District Location; but excluding all other employees, including dispatchers, mechanic technicians, and guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the Molalla, Lake Oswego, and Gresham bargaining units concerning terms and conditions of employment and, if understandings are reached, embody the understandings in signed agreements.

WE WILL make whole the unit employees at the Molalla, Lake Oswego, and Gresham facilities for any loss of earnings and other benefits resulting from our unlawful unilateral changes in terms and conditions of employment, with interest.

WE WILL furnish to the Union in a timely manner the information it requested between August 23, 2010, and April 17, 2011.

FIRST STUDENT, INC.

Daniel G. Mueller Esq., for the General Counsel.
Kristen J. Huening, Esq., for the Respondent.
Naomi Loo, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Portland, Oregon, on August 8 and 9, 2011, upon the third order consolidating cases, third consolidated complaint, and notice of hearing, as amended, complaint, issued on July 7, 2011, by the Acting Regional Director for Region 19.

The complaint alleges that First Student, Inc., Respondent, violated Section 8(a)(1) of the Act by telling employees that they would not receive raises because of the Union and contract negotiations, that employees would not receive retroactive wage increases if they engaged in a strike, that attendance bonuses would not be paid due to contract negotiations, that employees' wages were frozen because of contract negotiations, and that only nonunion employees would receive matching contributions to Respondent's retirement savings plan.

The complaint alleges that Respondent violated Section 8(a)(5) of the Act by unilaterally cancelling or delaying annual step increases for its employees in the Molalla, Lake Oswego, and Gresham bargaining units, and by delaying attendance bonuses in the Lake Oswego unit.

The complaint also alleges Respondent violated Section 8(a)(5) of the Act concerning the Gresham bargaining unit by: refusing to negotiate economic terms and conditions of employment until agreement was reached on all noneconomic issues, by failing to meet at reasonable times and places for bargaining with the Union, and by unilaterally cancelling bargaining meetings.

The complaint finally alleges Respondent violated Section 8(a)(5) of the Act by failing and refusing to furnish the Union with information relevant and necessary to the Union's performance of its duties as collective-bargaining representative of employees in the Gresham bargaining unit.

Respondent filed a timely answer to the complaint stating it had committed no wrongdoing.

FINDINGS OF FACT

Upon the entire record herein, including the briefs from the counsel for the Acting General Counsel, General Counsel, Charging Party, and Respondent, I make the following findings of fact.

I. JURISDICTION

Respondent admitted that it is a State of Delaware corporation with offices and places of business in Molalla, Lake Oswego, and Gresham, Oregon, and is engaged in the business of providing schoolbus transportation services to various school districts. During the 12 months, in conducting its business, Respondent purchased and received at its Molalla, Lake Oswego, and Gresham, Oregon facilities goods valued in excess of $50,000 directly from points outside the State of Oregon.

Based upon the above, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admitted and I find that the Oregon School Employees Association Union (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Respondent provides schoolbus transportation for school districts in Molalla, Lake Oswego, and Gresham, Oregon. Respondent employs about 45 full- and part-time drivers in Molalla, 40 drivers in Lake Oswego and 110 drivers in Gresham. Respondent's managers are Tammy Clifford at Molalla, Darryl Jefferson at Lake Oswego, and Michael Jourdan at Gresham. An entity related to Respondent, First Group America, provides labor relations assistance to Respondent. Peter Briggs is director of labor relations for First Group America and was Respondent's chief negotiator at Gresham. Respondent's director of human resources is Kim Mingo. Mingo acted as Respondent's lead negotiator in collective bargaining with the Union at Respondent's Lake Oswego and Molalla facilities. Respondent's regional operations manager is Kay Hemstreet. Respondent admitted that these individuals were supervisors or agents of Respondent within the meaning of the Act.

Since April 27, 2007, the union has been the exclusive collective-bargaining representative of the following unit of employees:

> All full time and regular part time school bus operators and driver trainers employed by Respondent at its Molalla, Oregon, facility; but excluding all other employees, managers, technician in charge (mechanics), technicians (mechanics), clerical employees, and guards and supervisors as defined in the Act.

Respondent's recognition of the Union as the exclusive collective-bargaining representative of the employees in the above unit has been embodies in a collective-bargaining agreement effective from July 1, 2007, to June 30, 2010.

On January 15, 2010, the Union was certified as the exclusive collective-bargaining representative of employees in the following unit:

> All full time and regular part time drivers employed out of Respondent's Lake Oswego, Oregon facility; but excluding all mechanics/technicians, office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act and all other employees.

On June 18, 2010, the Union was certified as the exclusive collective-bargaining representative of employees in the following unit:

> All full time and regular part time bus drivers and driver trainers at Respondent's Gresham-Barlow School District Location; but excluding all other employees, including dispatchers, mechanic technicians, and guards, professional employees, and supervisors as defined in the Act.

This case surrounds separate collective bargaining between Respondent and the Union in 2010 and 2011 at Respondent's three facilities at Molalla, Lake Oswego, and Gresham, Oregon, described above. Respondent's employees at each of the three locations work during for the most part during the school year beginning after Labor Day in September unit school is out in June of the following year. At each of the locations prior to the advent of the Union, employees were given wage increases when they returned to work in September. At Molalla the Union negotiated a wage scale effective July 1, 2007, to June 30, 2010.

1. The Molalla unit

Respondent has provided schoolbus transportation services out of its Molalla facility pursuant to a contract with the Molalla River School District since about 1998. After the Union was certified at Respondent's Molalla facility, the parties entered into negotiations that culminated in the 2007–2010 collective-bargaining agreement.[1] Prior to the Union's certification, from 2003–2006 drivers got an annual pay increase at the beginning of the school year. The collective-bargaining agreement provided for wage increases each July through its expiration in June 2010 as follows:

> ARTICLE 16—WAGES
>
> Section I. Route Wages.
> Effective July 1, 2007
>
> Years Employed Per hour rate
>
> 1st year $11.60
> 2nd year $11.80
> 3rd year $12.00
> 4th year $12.10
> 5th year $12.35
> 6th year+ $13.75
> Grandparented $14.80
>
> Effective July 1, 2008
>
> Years Employed Per hour rate
>
> 1st year $11.65
> 2nd year $11.85
> 3rd year $12.10
> 4th year $12.25
> 5th year $12.40
> 6th year+ $14.05
> Grandparented $15.50
>
> Effective July 1, 2009
>
> Years Employed Per hour rate
>
> 1st year $11.70
> 2nd year $11.95
> 3rd year $12.20
> 4th year $12.45
> 5th year $12.60
> 6th year+ $14.50
> Grandparented $15.85
>
> Section 2. Steps. Employees shall be moved ahead step by step on the salary schedule each July 1 or upon the first day of work in each school year, whichever comes later.

Prior to the expiration of the 2007–2010 contract, the parties commenced negotiations for a successor contract in March 2010. At the start of the 2010–2011 school year, Molalla Unit drivers who were not at the top step under the wage scale effective July 1, 2009, did not receive a step increase.

During bargaining Respondent's regional human resources manager, Kim Mingo, took the position that drivers would be given no raises in September 2010 because the expiring contract did not provide for raises after June 2010 and because the parties were in negotiations to bargain for increases. However, in February 2010 Respondent moved its Molalla drivers up one step in pay grade in an effort to settle a pending unfair labor practice and to make a movement in bargaining. In July 2011, the parties reached agreement on a successor contract, effective from July 1, 2010, through June 30, 2012.[2] The 2010 contract included a 9-step pay scale which increased wages from the 2007 collective-bargaining agreement. In about June 2011, Respondent paid the wage increases set forth in the 2010 contract retroactively to July 1, 2010, without interest, but only for drivers who worked the entire 2010–2011 school year.[3] Several drivers who worked during the 2010–2011 school year, but left Respondent's employment prior to the end of that year, did not receive retroactive pay.

2. The Lake Oswego unit

a. The wage issue

Respondent has provided school bus transportation services out of its Lake Oswego facility since at least 2008 pursuant to a contract with the Lake Oswego School District. After certification in January 2010, the parties commenced bargaining and in January 2011 entered into a collective-bargaining agreement effective from 2011–2013. Prior to the Union's certification in January 2010, drivers received annual pay raises in September from 2006 to 2009 according to a pay scale that provided hourly wage increases based upon time in service.[4] Drivers spent 1 full year at each step, and moved up the scale automatically each year.[5] At the start of the 2009–2010 school year, drivers who had spent a full year in their current step received a step increase. That school year, the hourly rate at steps 1–5 of the wage scale was unchanged from the 2008–2009 school year, but the hourly rate in step 6 increased by $0.25, so even drivers who had been at the top of the 2008–2009 pay scale received a pay increase. The 2009–2010 wage scale provides:

Years	09/10 wage
New Drivers	$11.80
1-2 year	$12.00
2-3 year	$12.50

[1] GC Exh. 33.

[2] GC Exh. 36.

[3] GC Exh. 37.

[4] GC Exh. 42.

[5] R. Exh. 12.

3-4 year	$13.00
4-5 year	$13.40
5 years and beyond	$14.65

While Respondent contends that employees in the Lake Oswego unit had their wages frozen at the start of the 2009–2010 school year, Manager Jefferson testified that every driver who had been in their current step a full year received a step increase at the start of the 2009–2010 school year. The hourly rate earned at steps 1–5 of the 2009–2010 wage scale was the same hourly rate earned under steps 1–5 of the 2008–2009 school year, but drivers nevertheless moved up the scale, receiving their step increases. Further, the hourly rate at step 6 increased by $0.25, which ensured that even drivers who had been at the top of the 2008–2009 pay scale received a pay increase.

During bargaining in September 2010 the Lake Oswego drivers received no pay increase. On August 25, 2010, driver Brian McLaughlin was told by Manager Jefferson, that he would not get a pay raise because the parties were under contract negotiations. Jefferson admits that during these one-on-one meetings on August 25 he told every driver that there would be no pay increases "until the negotiations were done."

At a bargaining session on August 31, 2010, Union Field Representative Kimberly Bonner asked Mingo if drivers were getting pay raises. Mingo told Bonner that there would be no raises while bargaining was ongoing but raises would be paid retroactively when the contract was signed. However, Mingo added if the employee struck there would be no raises. There were several bargaining unit employees at this bargaining session.

Respondent and the Union reached a first contract at the Lake Oswego facility in early 2011. The contract was ratified in January 2011 and finalized by the parties in March 2011. After the contract was ratified, wage increases were paid retroactively to September 1, 2010, the effective date of the contract. However, only drivers who were employed as of the contract ratification date received retroactive pay increases around February or March 2011.

b. Good attendance bonus

Prior to 2010 a $60 good attendance bonus was paid monthly to drivers with perfect attendance in the previous month. Driver McLaughlin had perfect attendance for the month of September 2010. However, he did not receive a bonus the following month. When McLaughlin complained to Jefferson, Jefferson told McLaughlin that while the parties were in negotiations there would be no bonuses paid. Shortly thereafter Jefferson wrote on the bulletin board in the breakroom: "Attendance bonuses checks will not be issued due to ongoing negotiations." Jefferson admitted that during this meeting he told McLaughlin that attendance bonuses would not be paid until negotiations were complete.

Later that same day, Jefferson wrote a note on the chalkboard in the employee breakroom, which he customarily uses to communicate with drivers, stating: "Attendance bonus checks will not be issued due to negotiations." At hearing, Jefferson admitted that attendance bonuses earned in September 2010, were not timely paid, explaining that he had been "instructed not to pay the attendance bonuses until negotiations were done."

McLaughlin was paid his September bonus in November 2010. However, Respondent never repudiated its unlawful refusal to pay bonuses during negotiations.

3. The Gresham unit

Respondent has provided schoolbus transportation services out of its Gresham facility since 2000 pursuant to a contract with the Gresham-Barlow School District. The Union was certified at the Gresham facility on June 18, 2010. Dr. Fernando Gapasin (Gapasin), the Union's field representative, was responsible for bargaining with Respondent at Gresham.

a. Wage increase

On August 19, 2010, Gapasin attended a meeting of drivers at the Gresham facility prior to the start of the school year. At this meeting driver Jennie Seibel asked Gresham, Manager Jourdan if employees were going to get a pay raise. Jourdan replied no, due to the Union and settling on a committee in Cincinnati. When Seibel asked what had to be done to get a raise Jourdan said, "[T]hat's the way it is till things are settled and pay rates decided upon."

Employee testimony, as well as the testimony of Dr. Jourdan, establishes that, until the 2010–2011 school year, Gresham unit drivers customarily received a pay increase at the start of every school year. Dr. Jourdan, the manager at the Gresham facility since January 2008, admitted that it is customary for Gresham unit drivers to receive an annual pay increase. As confirmed by the spreadsheet[6] produced by Respondent pursuant to subpoena, Gresham unit drivers received a wage increase each August from 2006 through 2009, the year prior to the Union's certification. The information contained in the spreadsheet further establishes that Respondent maintained a several step pay scale for its Gresham drivers.

At hearing, Respondent suggested that Gresham unit drivers did not receive a wage increase at the start of the 2010–2011 school year due to an alleged wage freeze implemented in July or August 2009. Respondent did not produce its 2008–2009 and 2009–2010 wage scales, despite subpoena. However, Jourdan admitted that all Gresham unit drivers received a pay increase at the start of the 2009–2010 school year. Jourdan stated that the pay increases that drivers received at the start of the 2009–2010 school year were merely step increases under the 2008–2009 wage scale, which had not been revised. Further, the spreadsheet shows that in August 2009, eight drivers received a pay increase to $15.40 an hour, a rate that no driver earned the year before. This indicates that there was no such rate under the 2008–2009 wage scale. Thus, consistent with the custom at the Gresham facility, all Gresham unit drivers received a pay increase at the start of the 2009–2010 school year. Furthermore, no documentary evidence was proffered that Respondent implemented any sort of wage freeze. While Jourdan

[6] GC Exh. 44, pp. 1–31.

testified that a wage freeze was implemented in July or August 2009, he admitted that the wage freeze may have been only a rumor that was discussed and he was not aware of any final decision concerning a wage freeze.

b. Retirement plan

On November 10, 2010, Respondent's president, Burtwistle, sent Gresham unit drivers a letter regarding Respondent's retirement savings plan.[7] In his letter, Respondent announced that it was reinstating its "employer matching contribution," retroactive to January 2010. The "employer matching contribution," however, would be paid to only "non-union participants:"

> All non-union participants will receive an employer matching contribution of 100% of the before tax savings contributions that the participant contributes to the Plan.

c. Information requests

On August 23, 2010, Cory Blacksmith, the president of Union chapter 204 at the Gresham facility sent a letter[8] to Jourdan that stated:

> We are formally requesting the step up raise sheets that have been issued to Payroll for the past 5 years (2004–2005 thru 2009–2010 school years) and all First Student Policy's regarding this matter.

The wage scale shows, in table format, the hourly rate paid to drivers at each step of the scale; the steps of the wage scale are based on years of service. Blacksmith had seen such a wage scale in the payroll office in 2006, and again in 2010.

On August 31, 2010, Gapasin sent an email[9] to Respondent's vice president, labor relations, Tom Secrest, with a copy to Jourdan requesting information about pay increases together with a copy of Blacksmith's August 23, 2010 letter.

On October 14, 2010, Gapasin sent an email[10] to Peter Briggs, Respondent's chief negotiator for Gresham and again requested wage increase information as well as a list of all bargaining unit employees, including names, addresses, rates of pay and benefits, and date hired.

On November 2, 2010, by email[11] Gapasin requested from Briggs dates for negotiation meetings. In addition, Gapasin requested additional information including the current service contract made between the Gresham School District and Respondent. The Union again requested a current list of all bargaining unit personnel including their names, addresses, phone numbers, date of hire, job assignment, hours worked per day, hourly pay and benefits received, as well as past and current First Student policies regarding annual salary increases.

Briggs replied to Gaspasin's information request on November 2, 2010,[12] denying the request for the contract between Respondent and the Gresham School District, the annual wage increase information names, addresses, phone numbers, date of hire, job assignment, hours worked per day, hourly pay and benefits received, as well as past and current First Student policies regarding annual salary increases. Brigg's response stated in part:

> In addition to the foregoing, be advised that the Company believes its contract with the Gresham School District is proprietary information so if you desire that document you could pursue such through the District as we believe it is public information and is not our place to share the document directly with the union. Furthermore, how we have conducted our processes for adjusting wages as a non-union entity is also considered proprietary information, however we will provide you the current pay rates for all members of the bargaining unit as part of the information Mr. Jourdan will be forwarding to you.

The Union did not agree that the wage information it had requested was proprietary, but nevertheless offered, repeatedly, to discuss the issue of confidentiality with Respondent.[13] Respondent, however, never accepted the Union's repeated offers to negotiate confidentiality protections.

With respect to dates for bargaining, Briggs stated:

> With respect to possible dates for bargaining, this will be challenging due to holidays and the respective schedules of the Company's bargaining team members. Therefore, by copy of this message to Michael and Kay, I am sharing with all of you my possible dates, these of course being subject to everyone's availability and how such may mesh with your own schedule. As things stand now, we could begin discussions on December 1 and 2 or December 6 and 7. Another alternative might be November 22 and 23 however this is the week of Thanksgiving and flights may be hard to come by.

Attached to Briggs email of November 2, 2010, was Respondent's proposal for ground rules.[14] Respondent's proposed ground rules included item 2 which stated in part, "Non economic discussions will be concluded before any economic talks will be entertained." At no time did the Union agree to this proposal. In fact on November 17, 2010, the Union responded to Respondent's ground rules and struck the provision of ground rule 2 that stated, "Non economic discussions will be concluded before any economic talks will be entertained."

The Union also made another request for information on November 17, 2010.[15] The request included:

> (1) Fleet cost information including the depredation log, miles driven and total number of gallons of fuel *purchased* in the 2010 fiscal *year* (through March 31, 2010) by each vehicle *used* in *the* Gresham Barlow School District.
>
> (2) Maintenance costs per vehicle to include hours billed and price per hour, services rendered, and if the services were for scheduled maintenance or outside of scheduled maintenance regarding the Gresham Barlow contract in the 2010 fiscal year.
>
> (3) All costs associated with building leases, loans, mortgag-

[7] GC Exh. 31.
[8] GC Exh. 2.
[9] Ibid
[10] GC Exh. 3.
[11] GC Exhs. 4 and 5.
[12] GC Exh. 6.
[13] GC Exhs. 7–11.
[14] GC Exh. 6, p. 3.
[15] GC Exh. 12.

es, debt service and/or rents regarding the Gresham Barlow contract for the 2010 fiscal year and scheduled for the 2011 fiscal year.

(4) All actual costs associated with purchasing supplies for the 2010 fiscal year regarding the Gresham Barlow contract.

(5) Total amount of fuel purchased separated by vehicles used to *transport* Gresham Barlow students and other vehicles for the 2010 fiscal year.

(6) Total number of hours including route hours, overage hours, athletic/field trip route hours and athletic/field trip layover hours for the 2010 fiscal year.

(7) Total cost of any additional surcharge costs for mountain trips or overnight hours for the 2010 fiscal year.

(8) Total costs billed to Gresham Barlow school district by object to include payroll associated *payroll costs; supplies, purchased services,* capital *outlay, or other* costs in the 2010 fiscal *year*.

(9) All revenue earned from charter services of the fleet used to transport Gresham Barlow students in the 2010 fiscal year.

(10) All past and current cost estimates, contract addendums and price escalation agreements.

At the bargaining table on March 22, 2011, Briggs claimed that information regarding annual pay increases was not available. However, Jourdan's testimony established that there is an annual wage scale at the Gresham facility stored on a computer, with a hardcopy maintained in Jourdan's office. The wage scale shows the wage rates for the current year, as well as the preceding year, broken down by steps. During bargaining at the Gresham facility, Respondent never produced any wage scale to the Union.

Respondent, moreover, never produced any Gresham wage scale to the Acting General Counsel, despite subpoena. The General Counsel served on Respondent a subpoena seeking "documents and communications related to or showing the wage rates and wage increases at Respondent's facility in Gresham, Oregon, from January 1, 2006, through the present, including but not limited to, . . . wage sheets and wage summaries." (Tr. 563:7–14.) Dr. Jourdan admitted receiving a copy of this subpoena before the hearing and looking for responsive documents. (Tr. 563:7–16.) Respondent, however, did not produce to counsel for the Acting General Counsel the wage scales that Dr. Jourdan described at hearing. On the third and final day of hearing, Respondent's counsel belatedly offered to produce the subpoenaed wage scales, but the Court properly rejected this offer as untimely. (Tr. 586:122.) Respondent's wage scales were undeniably relevant, as they relate to the core issue of whether Respondent unlawfully ended its practice of granting Gresham unit drivers a pay increase at the start of every school year, and they should have been produced before the hearing commenced. The Acting General Counsel, therefore, requests that an adverse inference be drawn against Respondent for failing to produce such relevant documents. Specifically, the Acting General Counsel asks that Judge McCarrick find that: (1) the wage scales that were not produced would confirm that Respondent had a custom of granting its drivers a pay increase at the start of every school year, as already established by documentary and testimonial evidence, and (2) there was no wage freeze in 2009, as Dr. Jourdan claimed, as at least the rate at the top step of the pay scale increased that year.

At the March 22, 2011 bargaining session, the Union made an additional information request[16] that included:

> 4. Please provide the number of employees and their work hours per day that fit into the following categories: *Driverltrainer,* Special Education driver, Bus washer, Cover driver and Translator (hours spent translating would suffice).

The Union sought this information in order to enable the Union to accurately cost its contract proposals, including a differential for the different categories of workers. Respondent had not previously provided the Union with this information. Jourdan testified that Respondent's payroll department should be able to generate the information requested in item 4 of the Union's March 22 request. Nevertheless, Respondent refused to provide this information, telling the Union that it did not have those categories of workers and the Union had received all it was going to get. Respondent said that they had no information responsive to item 4 and that the Union had all the information they were going to get on busdrivers.[17]

Respondent's first contract language proposal, given to the Union during bargaining on February 8**,** Respondent included a management-rights clause that stated:[18]

> The relevant portions of the contract between the company and its client under which an employee of the company performs work shall be incorporated by reference into this Agreement, to the extent only that such provisions impose terms, conditions or requirements upon the Company's employees that are not required under the terms of this Agreement. In a situation in which a provision of this Agreement is in conflict with any of the provisions of said contract or the directives of the Company's client regarding the Company's employees, the relevant portions of said contract or the client's directives shall prevail for all employment related purposes. All employees of the Company are employed subject to the consent of the Company's Client. Should the client consent be denied or withdrawn, the employee must be discharged. Such discharge shall not be subject to the grievance or arbitration procedures of this Agreement.

On February 8**,** at the bargaining table, the Union told Respondent that it could not agree to Respondent's proposed management rights language without seeing a copy of the Gresham Revenue Contract, referenced in Respondent's February 8 proposal. Respondent refused to produce the Gresham Revenue Contract claiming it is both proprietary and publicly available.

In its second contract language proposal,[19] given to the Un-

[16] GC Exh. 10.

[17] Jordan's response of November 8, 2010, GC Exh. 20, did not contain all of the information the Union requested in its March 22 information request.

[18] GC Exh. 18, p. 5.

[19] GC Exh. 19.

ion during bargaining on March 21, Respondent's proposed management-rights clause was unchanged from February 8. The following day, the Union gave Respondent a written request for the Gresham Revenue Contract.[20]

On April 7, 2011, the Union again requested[21] revenue agreements between Respondent and the Gresham School District in response to Respondent's proposed management rights clause The Union requested the Gresham Revenue Contract again on April 7 and 17, but Respondent still did not provide it to the Union.

Respondent never provided the Gresham Revenue Contract to the Union, despite having referenced it in each of its contract proposals through April 14, 2011. Although Briggs testified that he expected the Union to trust his representations as to what the Gresham Revenue Contract provided although he admitted he is not familiar with the specific terms of the Gresham Revenue Contract.

On several occasions, including March 15, 17, 18, and 22, as well as April 7 and 17, 2011, the Union requested[22] that Respondent produce copies of its revenue contracts with the school districts in Sandy and West Linn-Wilsonville, Oregon. The Union requested these contracts because Respondent had represented at the bargaining table that its proposed management-rights language was required in all of its contracts, and the Union wanted to verify that assertion. Respondent never provided the Union with copies of its revenue contracts with the school districts in Sandy and West Linn-Wilsonville, Oregon.

d. Bargaining

The parties first bargaining session was scheduled for December 2, 2010. However, Respondent refused to meet with the Union because the Union had brought about 22 observers to the meeting. Gapasin told Briggs that Respondent had permitted observers at the Molalla and Lake Oswego bargaining sessions and Respondent should discuss this with the Union. Briggs replied he was not going to bargain in front of an audience.

The next bargaining session did not take place until January 6, 2011. At that time Respondent presented its second ground rules proposal[23] which continued to include item 2 requiring all non economic issues be resolved before economic issues would be discussed. Bargaining lasted for about 3 hours and consisted almost entirely of discussing ground rules. No agreement was reached regarding ground rules because of the parties' disagreement over rules 2 and 4. Respondent's proposed ground rule 4 excluded any bargaining unit observers from being present during bargaining sessions. At this meeting the Union gave Respondent a comprehensive bargaining proposal.[24]

On January 14, 2011, Briggs confirmed that the parties had agreed to meet on February 7 and 8, 2011, and he proposed additional meetings for March 21, 22, and 23, April 14 and 15, and June 21–23, 2011. On February 1, 2011, Gapasin confirmed those dates and also requested May 26 and 27. Briggs responded he could not meet on May 26 and 27 due to previous commitments.[25]

On January 17, 2011, the Union sent a copy of its proposed ground rules[26] to Respondent. The Union's proposed ground rules deleted any reference to noneconomic issues being resolved before economic issues could be discussed but agreed that there would be no observers in bargaining sessions.

At the February 7, 2011 bargaining session the entire 3 hours was devoted to discussion of ground rules with Respondent insisting that noneconomic issues being resolved before economic issues could be discussed. Finally at the February 8, 2011 bargaining session the parties agreed to ground rules[27] with no agreement on the order of discussion of economic versus non economic issues. The rules stated in part at item 2:

> It is the intent of the Company that non-economic discussions will be concluded before any economic talks will be entertained. The union's intent is to the contrary.

At the February 8 session Respondent made its first substantive proposal.[28] It contained no economic proposals.

The next bargaining took place on March 21–23, 2011. Respondent made another proposal on March 21, 2011.[29] Once again Respondent's proposal contained no economic terms.

Respondent continued to refuse to bargain on economic issues at the March bargaining meetings.

The next bargaining sessions took place on April 14 and 15, 2011. At the April 14 meeting, the Union made a full contract proposal to Respondent.[30] However, Respondent continued to refuse to bargain over economics. Respondent made a new proposal on April 15, however, it contained no economic terms.[31]

Ground rules at Lake Oswego took one-half hour to agree to and Respondent did not insist on all noneconomic issues being resolved before economic issues were discussed.

On April 17, 2011, the Union made yet another contract proposal that contained economic concessions. The offer was made contingent upon its being accepted by Respondent by April 20, 2011. Respondent made no response to this proposal.

The next bargaining was not scheduled to take place until June 21, 2011. In a further effort to advance the negotiations, on April 24, 2011, the Union again requested bargaining dates prior to June 21.[32] The Union requested more bargaining dates prior to the next scheduled June dates, and offered to meet via teleconference. Briggs denied this request the following day, stating that the June 2011 dates were "established in good faith" and "there are no other dates available for us to meet."[33] On April 25, the Union urged Respondent to find time for bar-

[20] GC Exh. 10.
[21] GC Exh. 21.
[22] GC Exhs. 8–11 and 21.
[23] GC Exh. 13.
[24] GC Exh. 14.
[25] GC Exh. 15.
[26] GC Exh. 16.
[27] GC Exh. 17.
[28] GC Exh. 18.
[29] GC Exh. 19.
[30] GC Exh. 22.
[31] GC Exh. 23.
[32] GC Exh. 25.
[33] Ibid.

gaining prior to June 21.[34] Again on May 19, 2011,[35] the Union made requests to Respondent to bargain before June 21.

The Union also sought the assistance of the Federal Mediation and Conciliation Service which offered to mediate bargaining any time during the week of June 6, 2011.[36] Respondent declined FMCS' invitation:

> Please be advised that we are aware of the services provided by FMCS, but the parties to the subject negotiation have NOT mutually agreed to utilize your services at this time. Accordingly we are expecting to meet with representatives of the OSEA as originally scheduled, their repeated attempts to alter the normal process notwithstanding.[37]

Despite the agreed upon bargaining date of June 21, 2011, Respondent refused to bargain with the Union on the ground that the employees in the Gresham bargaining unit had filed a decertification petition.[38] However, Respondent had no evidence of how many employees supported the decertification petition.

The following day Briggs retracted his refusal to bargain with the Union.[39] As noted in his email of June 22, 2011, Briggs advised Gapasin:

> Dr. Gapsin, contrary to my previous communications regarding the impact of the decertification filed by our employees, please be advised we will continue to bargain with you in the interest of attempting to continue to build positive relations.

Briggs suggested meeting on June 27–29, 2011. Gapasin responded by proposing the dates of July 11–13, 2011.[40] Briggs countered with August 2–4.[41] Gapasin agreed to meet August 2–4.

At the August 2, 2011 meeting Respondent made its first economic proposals.[42] Respondent's proposals included a 1 year contract duration and a wage scale effective August 2011 with no wage increases.

As of August 4, 2011, Respondent had provided none of the information requested by the Union since October 14, 2010, other than Jordan's November 8, 2010 letter providing employee names, hire dates, daily average hours worked, and hourly pay rates.

B. The Analysis

1. The 8(a)(5) allegations

a. The unilateral changes

Complaint paragraphs 7(a), (b), and (d) allege that between July 1 and August 2010, Respondent canceled or delayed annual wage increases for its Molalla, Lake Oswego, and Gresham employees.

Complaint paragraph 7(c) alleges that on about October 15, 2010, Respondent delayed payment of monthly attendance bonuses to its Lake Oswego employees.

Section 8(a)(5) of the Act provides that, "It shall be an unfair labor practice for an employer-(5) to refuse to bargain collectively with the representative of his employees."

It is well established that when employees are represented by a labor organization their employer may not make unilateral changes in their terms and conditions of employment. This is the so called "status quo" which the employer must maintain. See *NLRB v. Katz,* 369 U.S. 736, 747 (1962); *Jensen Enterprises,* 339 NLRB 877, 877 (2003). It is not a defense that unilateral changes were made pursuant to established company policy, or without antiunion motivation. Id. To be found unlawful, the unilaterally imposed change must be "material, substantial, and significant" and impact the employees or their working conditions. *Toledo Blade Co.,* 343 NLRB 385 (2004).

The duty to maintain the "status quo" imposes an obligation upon the employer not only to maintain what it has already given its employees, but also to implement benefits that have become conditions of employment by virtue of prior commitment or practice. *Jensen Enterprises,* supra. Periodic wage increases become conditions of employment if they are, "an established practice. . . regularly expected by the employees." *Daily News of Los Angeles,* 315 NLRB 1236 (1994), enfd., 73 F.3d 406 (D.C. Cir. 1996). As the Board noted in *Jensen* at 877:

> Accordingly, following its employees' selection of an exclusive bargaining representative, an employer may not unilaterally discontinue a practice of granting periodic wage increases. By withholding customary increases during the potentially long period of negotiations for an agreement covering overall terms and conditions of employment, an employer, in effect, changes existing terms and conditions without bargaining to agreement or impasse, in violation of Section 8(a)(5).

Accord: *Covanta Energy Corp.,* 356 NLRB 706, 719–723 (2011).

The Board has recognized a limited exception to the general rule that there may be no implementation of a unilateral change prior to impasse. *Stone Container Corp.,* 313 NLRB 336 (1993); *TXU Electric Co.,* 343 NLRB 1404 (2004); *Neighborhood House Assn.,* 347 NLRB 553 (2006); and *Covanta Energy Corp.,* supra.

The *Stone Container* exception provides that:

> [I]f a term or condition of employment concerns a discrete recurring event, such as annually scheduled wage review, and that event is scheduled to occur during negotiations for an initial contract, the employer may lawfully implement a change in that term or condition if it provides the union with a reasonable advance notice and an opportunity to bargain about the intended change." *Neighborhood House Assn.*, 347 NLRB 553, 554 (2006).

In order to rely on this exception, the employer cannot simply propose elimination of the annual practice but must be will-

[34] Ibid.
[35] GC Exh. 27.
[36] GC Exh. 26.
[37] Ibid.
[38] GC Exh. 28.
[39] GC Exh. 29, pp. 4–5.
[40] Ibid at p. 4.
[41] Ibid at p. 3.
[42] GC Exh. 30.

ing to bargain over the amount of the annual payment for that particular year. *Neighborhood House Assn.*, 347 NLRB at fn. 4 and 556. Thus, the employer is "obliged to maintain the fixed elements of the [practice or program] and to negotiate with the Union over the discretionary element of the [practice or program]—the amount." *Mission Foods*, 350 NLRB 336, 337–338 (2007). Further, "The employer relying on the *Stone Container* exception has to tell the Union that it is not going to continue the specified terms and conditions of employment." *Covanta Energy Corp.,* 356 NLRB 721–722.

Respondent, in its brief, acknowledges its obligation to maintain the status quo but contends that the *Stone Container* exception applies here with respect to the annual wage increases. Respondent's reliance is misplaced.

The facts are undisputed that Respondent had a past practice of granting annual wage increases at each of its three facilities involved here. While both Jourdan and Jefferson denied there was a wage increase in the 2009–2010 year, the wage stubs of employees as well as spreadsheets provided by Respondent belie this assertion. Respondent contends that any past practice of annual wage increases at the Molalla facility were superseded by the 2007–2010 collective-bargaining agreement. Respondent fails to recognize that it had an obligation to continue following the economic terms of the expired Molalla collective-bargaining agreement which provided for annual step increases.

Here Respondent utterly failed to bargain with the Union over the amount to be paid under its extant wage programs. Rather, Respondent unilaterally eliminated the annual wage increases at all of its facilities by when it first announced to employees they would be getting no annual raise while negotiations continued, suggesting a fait accompli, not a meaningful proposal. *Covanta Energy Corp.,* supra at 722.

Any suggestion that Respondent's announcements concerning annual wage increases to employees and Dr. Gapasin at Gresham and to employees at Lake Oswego, constituted notice to the Union and an opportunity to bargain is specious since the employees were presented not with a proposal but a final decision.

Finally Respondent's novel argument that the unilateral changes in its annual wage increases were not material since there is no 8(a)(3) allegation herein is unsupported in the law. Moreover, there is nothing de minimus about a unilateral change during the course of initial bargaining for a collective-bargaining agreement.

With respect to the attendance bonus at the Lake Oswego facility, there is no dispute that Respondent failed to make a timely payment of the bonus to McLaughlin. There is no dispute that Jefferson told McLaughlin and later wrote on the employees' bulletin board that the reason employees would not be paid attendance bonuses until negotiations were completed. Like the annual wage increases, the attendance bonus was Respondent's extant practice. Prior to its discontinuance of the bonus, Respondent never gave the Union notice or an opportunity to bargain over the amount of the bonus but presented its decision as a fait accompli. Under these circumstances, the *Stone Container* exception does not apply. Further, since the bonus is a term and condition of employment whose cessation occurred while in the first year of bargaining for an initial agreement, Respondent's discontinuance of the bonus for 1 month is a material change. Moreover, while McLaughlin was later paid his September bonus in November, Respondent never repudiated Jefferson's statement. Thus, I can not find Respondent's action de minimus.

I find that in ceasing its annual wage increases and its attendance bonus Respondent violated Section 8(a)(1) and (5) of the Act as alleged.

b. Failure to negotiate on economic issues

Complaint paragraph 8(b) alleges that from December 2010 through April 15, 2011, Respondent failed to negotiate economic issues in collective bargaining with the Union until agreement was first reached on all non economic issues.

Section 8(d) of the Act defines the obligation to bargain collectively as the requirement of an employer and the representative of its employees to, "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder."

While a determination of whether an employer bargained in good faith, requires an examination of the totality of the Respondent's conduct both at and away from the bargaining table, see *Hardesty Co.,* 336 NLRB 258, 259 (2001), enfd. 308 F.3d 859 (8th Cir. 2002), it has long been settled that an employer may not condition bargaining over economic issues upon resolution of all noneconomic issues. *Erie Brush & Mfg. Corp.*, 357 NLRB 363, 373 (2011) (citing *John Wanamaker Philadelphia*, 279 NLRB 1034 (1986); *South Shore Hospital*, 245 NLRB 848 (1979), enfd. 630 F.2d 40 (1st Cir. 1980); also see *Eastern Maine Medical Center*, 253 NLRB 224, 245 (1980), enfd. 658 F.2d 1 (1st Cir. 1981); *Northwest Graphics, Inc.*, 342 NLRB 1288 fn. 24 (2004)).

The facts establish that Respondent continuously, from at least January 6, 2011, until August 2011, refused to bargain over economic terms until all noneconomic terms had been concluded. This position was embodied in Respondent's ground rules proposal[43] which included item 2 that required all noneconomic issues be resolved before economic issues would be discussed. From the first bargaining session on January 6, 2011, until Respondent made its first economic proposals on August 2, 2011, all bargaining consisted of discussions on noneconomic issues. Despite the Union's efforts to discuss economic issues and present economic as well as noneconomic proposals, Respondent steadfastly refused to discuss economics.

Respondent contends that its insistence on resolution of all noneconomic items as a prerequisite for economic discussions was part of a strategy of hard bargaining motivated by its business considerations. This is no defense since it is well established that such conduct is unlawful. Respondent further asserts that it never refused to negotiate economic items with the Union. This contention is simply not supported by the record. The record is clear that Respondent never submitted an economic proposal or discussed economic items until August 2011. While the parties ultimately agreed to ground rules, the record

[43] GC Exh. 13.

is clear that there was never a meeting of the minds concerning ground rules for discussing economic items absent full agreement on non economic terms. The ground rules[44] are clear that Respondent insisted on full agreement on noneconomics first while the Union insisted on discussing both economic and noneconomic issues together. It is pure sophistry to suggest that item 6 of the ground rules was an agreement to discuss noneconomics first. This interpretation flies in the face of ground rule item 2. Item 6 merely states that the economic package shall be agreed upon as a whole not that economics cannot be discussed until noneconomics are resolved.

I find that in insisting from January 6 to August 2, 2011, on resolution of all noneconomic issues before there could be any discussion of economic issues, Respondent bargained in bad faith in violation of Section 8(a)(1) and (5) of the Act as alleged.

c. Failure to meet at reasonable times from April 15 through August 2, 2011

Complaint paragraph 8(c) alleges that from April 15 through June 20, 2011, Respondent failed to meet at reasonable times and places for bargaining with the Union concerning employees at the Gresham facility.

Complaint paragraph 8(e) alleges that from June 21 through August 2, 2011, Respondent failed to meet at reasonable times and places for bargaining with the Union concerning employees at the Gresham facility.

As noted earlier, Section 8(d) of the Act defines the obligation to bargain collectively as the requirement of an employer and the representative of its employees to, "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder."

An employer's obligation to bargain in good faith includes a duty to make its authorized representative available for negotiations at reasonable times and places. *Nursing Center at Vineland,* 318 NLRB 901, 905 (1995). See also *Milgo Industrial, Inc.,* 229 NLRB 25, 31 (1977). An employer acts at its peril when it chooses as a bargaining agent someone who is encumbered by conflicts. *Caribe Staple Co.*, 313 NLRB 877, 893 (1994); *O & F Machine Products Co.*, 239 NLRB 1013, 1019 (1978); *Imperial Tile Co.*, 227 NLRB 1751, 1754 (1977). The fact that its attorney may have been too busy to meet as scheduled does not serve to excuse an employer from its obligation to bargain in good faith. *Lawrence Textile Shrinking Co.*, 235 NLRB 1178, 1179 (1978); see also *Caribe Staple Co.*, 313 NLRB at 893; *O & F Machine Products Co.*, 239 NLRB at 1019.

In assessing Respondent's good faith or lack thereof, one cannot look at isolated circumstances, i.e., merely the scheduling of meetings. This case did not occur in a vacuum. Respondent's unilateral changes in refusing to grant annual wage increases and monthly attendance bonuses had the effect of undermining the Union's support among its members. Respondent further unlawfully insisted on negotiating all noneconomic terms before it would consider the meat of the collective-bargaining agreement wages, hours, and benefits. In addition, Respondent, as will be discussed further below, placed the Union in an untenable position in bargaining by refusing to provide information the Union had requested that was essential to the Union in making informed decisions in bargaining.

Between certification of the Union at the Gresham facility in June 18, 2010, and August 2, 2011, a period of almost 14 months, there were a total of 15 bargaining sessions scheduled. The parties met only 11 times because Respondent refused to meet without justification on four of those sessions. Between December 2, 2010, and August 2, 2011, a period of 8 months a total of 11 bargaining sessions took place. Respondent refused to meet at the initial session on December 2, 2010, because the Union had brought about 22 observers to the meeting. Gapasin told Briggs that Respondent had permitted observers at the Molalla and Lake Oswego bargaining sessions and Respondent should discuss this with the Union. Nevertheless, Briggs refused to bargain in front of an audience. Before the scheduled June 21–23, 2011 bargaining sessions, Respondent refused to bargain with the Union on the basis of a decertification petition file by employees in the Gresham bargaining unit. Though Respondent repudiated its withdrawal of recognition, the June 21–23 bargaining sessions were canceled. While the Union repeatedly requested additional bargaining sessions with and without a Federal Mediator, Respondent repeatedly refused to more bargaining sessions.

The parties did not meet for bargaining from April 15 to August 2, 2011. On April 24, the Union requested more bargaining dates prior to the next scheduled June dates, offering to meet via teleconference. Briggs denied this request on April 25, stating that the June 2011 dates were "established in good faith" and "there are no other dates available for us to meet."[45] On April 25, the Union urged Respondent to find time for bargaining prior to June 21. Again on May 19,[46] the Union made requests to Respondent to bargain before June 21.

The Union also sought to utilize the Federal Mediation and Conciliation Service which offered to mediate bargaining any time during the week of June 6, 2011. Respondent declined to utilize the services offered by FMCS, explaining to the FMCS Mediator that Respondent would bargain directly with the Union under the long-established schedule on June 21–23.

After having unilaterally canceled the June 21–23 bargaining sessions, Briggs suggested meeting on June 27–29, 2011. Since the school year was over and many drivers had left the area for other work, Gapasin responded by proposing the dates of July 11–13, 2011. Briggs countered with August 2–4.[47] Gapasin agreed to meet August 2–4.

Respondent met with the Union less that once a month between certification and August 2, 2011. Between April 15 and June 20, 2011, the parties failed to meet. Respondent contends that Briggs and its bargaining team were too busy to meet more frequently. However, as the Board has held, once a month meetings are scarcely regular intervals. *Milgo Industrial, Inc.,* 229 NLRB 25, 31 (1977). Moreover, the unavailability of its

[44] GC Exh. 17.

[45] GC Exh. 25.

[46] GC Exh. 27.

[47] Ibid at p. 3.

chosen negotiator does not excuse Respondent of its obligation to bargain in good faith at reasonable times. *Nursing Center at Vineland,* 318 NLRB 901, 905 (1995); *Caribe Staple Co.*, 313 NLRB at 893; *Lawrence Textile Shrinking Co.*, 235 NLRB at 1179.. As the ALJ, affirmed by the Board, found in *Caribe Staple Co.*, 313 NLRB 877, 893 (1994):

> The statute does not restrict any party's right to select whom they please as bargaining representative, provided that this designation does not collide with the duty under Section 8(d) ''to meet at reasonable times.'' Considerations of personal convenience, including geographic or professional conflicts, do not take precedence over the statutory demand that the bargaining process take place with expedition and regularity. An employer acts at its peril when it selects an agent incapacitated by these or any other conflicts.

Respondent's argument to justify the large gap in bargaining was Briggs' busy schedule. The Board, however, has repeatedly rejected this "busy negotiator" argument. *Calex Corp.*, 322 NLRB 977, 978 (1997); *Barclay Caterers*, 308 NLRB 1025, 1035–1037 (1992). Furthermore, in *Barclay Caterers,* supra at 1037, the ALJ went on to reason that the violation in that case was "especially clear here where much of the little time that Respondent allowed for bargaining was spent attempting to get Respondent to comply with its statutory duty to furnish relevant information and its statutory duty to meet more often."

In this case, in the context of the Union unsuccessfully seeking relevant information, unsuccessfully seeking earlier bargaining dates, and Respondent arbitrarily cancelling scheduled meetings since December 2, 2010, I find that between April 15 and August 2, 2011, Respondent refused to meet at reasonable times and violated Section 8(a)(5) of the Act as alleged.

d. Cancellation of bargaining sessions

Complaint paragraph 8(d) alleges that on June 21, 2011, Respondent unilaterally canceled bargaining scheduled for June 21–23, 2011.

In *Dresser Industries,* 264 NLRB 1088 (1982), the Board held that the filing of a decertification petition alone does not provide a reasonable ground for an employer to refuse to recognize a bargaining representative or to withdraw from bargaining. In this regard the Board held:

> A decertification petition may be properly filed with the Board on the basis of a representation, evidenced by authorization cards or other signatures, that 30 percent of the unit employees desire such an election. On its face, the petition indicates nothing more than the disaffection of a minority of unit employees. Absent evidence . . . that a majority of the employees supported the petition, such a petition in no way reflects, or purports to reflect, the sentiment of the unit majority. [*Dresser Industries,* 264 NLRB at 1088.]

Other than the decertification petition itself, Respondent offered no evidence to justify its refusal to meet and bargain with the Union. While Respondent withdrew its June 21, 2011 refusal to bargain the following day by offering to bargain during the week of June 27, Respondent never repudiated its unlawful announcement, made on June 21 that it would not bargain with the Union until after the decertification election due to the fact that the Union's status had been questioned. *Passavant Memorial Area Hospital,* 237 NLRB 138, 138 (1978).

Respondent contends it was privileged to refuse to bargain with the Union on June 21, 2011, because it had a good-faith doubt that the Union continued to represent a majority of its employees. This argument is without merit. No evidence was adduced that Respondent entertained a good-faith doubt as to the Union's continued majority support of the employees in the Gresham bargaining unit. As the Board held in *Dresser Industries,* supra, the mere filing of a decertification petition does not supply Respondent with a good-faith doubt.

Moreover, contrary to Respondent's argument, the mere attempt to reschedule bargaining after June 23, "in the interest of attempting to continue to build positive relations." does not satisfy the requirements of *Passavant Memorial Area Hospital,* supra at 138–139, for in order to be effective the repudiation:

> [M]must be "timely," "unambiguous," "specific in nature to the coercive conduct," and "free from other proscribed illegal conduct." *Douglas Division, The Scott & Fetzer Company,* 228 NLRB 1016 (1977), and cases cited therein at 1024. Furthermore, there must be adequate publication of the repudiation to the employees involved and there must be no proscribed conduct on the employer's part after the publication. *Pope Maintenance Corporation,* 228 NLRB 326. 340 (1977). And, finally, the Board has pointed out that such repudiation or disavowal of coercive conduct should give assurances to employees that in the future their employer will not interfere with the exercise of their Section 7 rights. See *Fashion Fair, Inc., et al.*. 159 NLRB 1435, 1444 (1966): *Harrah's Club,* 150 NLRB 1702, 1717 (1965).

In the instant case, the so called repudiation was not free of other proscribed illegal conduct, including Respondent's refusal to meet at reasonable times, its unilateral changes and as will be seen below its refusal to furnish information. In addition Respondent's "repudiation" was not published to its employees with assurances that in the future it would not interfere with the exercise of their Section 7 rights.

I find that in arbitrarily cancelling the June 21–23 bargaining sessions without good cause, Respondent failed to bargain in good faith by refusing to meet at reasonable times and places and violated Section 8(a)(5) of the Act as alleged.

e. The requests for information.

Complaint paragraph 9(a) alleges that on about August 23, 2010, the Union requested that Respondent furnish it with step up raise sheets for the past 5 years and all related policies at the Gresham facility.

Complaint paragraph 9(b) alleges that on about August 31, October 14, and November 2, 2010, and January 25, March 15, 18, 22, and April 17, 2011, the Union requested that Respondent furnish the Union with wage step up information at the Gresham facility.

Section 8(a)(5) of the Act mandates that employers must provide unions, upon request, with information which is relevant for the purpose of contract negotiations. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–436 (1967); *Shoppers Food*

Warehouse Corp., 315 NLRB 258, 259 (1994). The Board has held that an employer is obligated to furnish a union information relevant and necessary to enable the union to carry out its statutory obligations as the employees' exclusive bargaining representative including information related to contract negotiations. *Day Automotive Group,* 348 NLRB 1257, 1257, 1262 (2006); *Newcor Bay City Division,* 345 NLRB 1229, 1237 (2005). Information about bargaining unit employees' terms and conditions of employment is presumptively relevant. *Boston Herald-Traveler Corp.,* 110 NLRB 2097 (1954), enfd. 223 F.2d 58 (1st Cir. 1955).

The record reflects that since August 23, 2010, the Union has repeatedly made requests for wage raise sheets Respondent used in giving drivers wage increases at the Gresham unit. Given Respondent's failure to give step increases in 2010, this information was relevant to the Union in order to determine if Respondent had violated a past practice and for the purposes of collective bargaining.

First Respondent contends that there is no evidence that such information exists. This argument is refuted by its own witness, Gresham's manager, Jourdan, who admitted that there is an annual wage scale at the Gresham facility stored on a computer, with a hard copy maintained in Jourdan's office.

Respondent next argues that what the Union requested was Respondent's policies regarding step up pay increases and Respondent has no such policies. There is no doubt what the Union requested on August 23, 2010, when Cory Blacksmith, the president of Union at the Gresham facility sent the letter[48] to Jourdan requesting:

> . . . the step up raise sheets (emphasis added) that have been issued to Payroll for the past 5 years (2004–2005 thru 2009–2010 school years) and all First Student Policy's regarding this matter.

The wage sheets were never supplied. This information was necessary and relevant to the Union in performing its duties as exclusive collective-bargaining representative and since it relates to wages it is presumptively relevant. In failing to provide this information Respondent violated Section 8(a)(5) of the Act.

Complaint paragraphs 9(c) and (d) allege that on about February 8, April 7 and 17, 2011, the Union requested that Respondent furnish the Union with the current service contract between the Gresham School District and Respondent.

Respondent interjected the Gresham Revenue Agreement into bargaining when it proposed on February 8, 2011, that the Gresham Revenue Agreement be incorporated into the parties' collective-bargaining agreement. The Union could not agree to such a proposal without reviewing the document since portions of the Revenue Agreement deal with discipline of bargaining unit employees. Since the Revenue Agreement deals with discipline it is presumptively relevant and must be produced.

Respondent's contention that the Gresham Revenue Agreement is proprietary information is not supported by the case law. In *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1105–1106 (1991), the Board established a test for dealing with an employer's claimed confidential information:

> It is clear from the foregoing that in dealing with union requests for relevant, but assertedly confidential information, the Board is required to balance a union's need for the information against any "legitimate and substantial" confidentiality interests established by the employer. The appropriate accommodation necessarily depends on the particular circumstances of each case. The party asserting confidentiality has the burden of proof. (footnote omitted) Legitimate and substantial confidentiality and privacy claims will be upheld (footnote omitted) but blanket claims of confidentiality will not.(footnote omitted) Further, a party refusing to supply information on confidentiality grounds has a duty to seek an accommodation. Thus, when a union is entitled to information concerning which an employer can legitimately claim a partial confidentiality interest, the employer must bargain toward an accommodation between the union's information needs and the employer's justified interests. (Footnote omitted.)

In this case, Respondent has failed in its threshold obligation to establish that it has a confidential or proprietary interest in the Gresham Revenue Agreement. Moreover, the record establishes that Respondent made no effort to bargain to an accommodation with the Union regarding the Revenue Agreement. Rather the evidence establishes that Respondent simply refused to provide the agreement to the Union.

Respondent's contention that the Union could have obtained the requested information elsewhere, likewise fails. The Board has held that an employer may not refuse to furnish relevant information to a union on the grounds that the union has an alternative source or method of obtaining that information. *Hospitality Care Center*, 307 NLRB 1131, 1135 (1992); *Public Service Corp. of Colorado*, 301 NLRB 238 (1991); *Washington Hospital Center*, 270 NLRB 396, 401 (1984); *Kroger Co.*, 226 NLRB 512–514 (1976).

Respondent's contention that the management-rights clause was later withdrawn does not obviate the relevance of the document at the time of the demand. No final agreement has been reached at this point and there is nothing to prevent Respondent from renewing its previous management-rights language. Respondent's management-rights proposal that incorporated the Gresham Revenue Agreement was not withdrawn until April 15, 2012.[49]

Respondent's argument that the refusal to furnish this information was somehow de minimus is likewise rejected in view of the plethora of other violations of the Act Respondent has committed.

Thus, Respondent refused to provide relevant information from February 8, 2011, and violated Section 8(a)(5) of the Act as alleged.

Complaint paragraphs 9(e) and (f) allege that on about March 15, 22, April 7 and 17, 2011, the Union requested that Respondent furnish it with the current service contracts between Respondent and the Sandy and West Linn-Wilsonville School Districts.

[48] GC Exh. 2.

[49] Compare the language of GC Exh. 19 with GC Exh. 23.

Again Respondent interjected outside revenue agreements into bargaining when it represented at the bargaining table that its proposed management-rights language, incorporating its revenue agreement with the Gresham School District, was required in all of its revenue contracts. The Union wanted Respondent's agreements with the Sandy and West Linn-Wilsonville School Districts to verify that assertion.

I have already rejected Respondent's argument that these revenue agreements are protected from disclosure to the Union because Respondent has failed to either establish that these revenue agreements are proprietary or that it bargained with the Union to reach some accommodation. Moreover, the documents continue to be relevant until a final agreement has been reached.

Thus, Respondent refused to provide relevant information from March 15, 2011, and violated Section 8(a)(5) of the Act as alleged.

Complaint paragraph 9(g) alleges that on about March 22, 2011, the Union requested Respondent furnish it the number employees in each of several job classifications in the Gresham facility.

The Union sought this information in order to enable it to make wage proposals for the different categories of employees. This information is presumptively relevant as it relates to wages of bargaining unit employees.

Respondent contends that it provided the Union with this information. Contrary to Respondent's assertion, the list provided by Jourdan[50] did not contain the information requested by the Union, i.e., the number of employees and their work hours per day in each category was not contained in Jourdan's list nor could it be extrapolated from the list. Nor was the information request vague or ambiguous in any manner.

By failing to provide the information regarding number of employees in each of several job classifications in the Gresham facility since March 22, 2011, Respondent has violated Section 8(a)(5) of the Act.

2. The 8(a)(1) allegations

Complaint paragraph 6(a) alleges that on August 25, 2010, Respondent through its Manager Jefferson, at the Lake Oswego facility told employees that they would not receive raises because it did not want to give raises during contract negotiations.

I have found that On August 25, 2010, driver Brian McLaughlin was told by his supervisor, Lake Oswego Manager Darryl Jefferson, that he would not get a pay raise because the parties were under contract negotiations. Jefferson admits that during these one-on-one meetings on August 25 he told every driver that there would be no pay increases "until the negotiations were done."

Similar statements have been previously found unlawful as a threat to change the status quo in connection with this Respondent in *First Student*, 341 NLRB 136, 141 (2004). See also *Covanta Energy Corp.*, 356 NLRB 706, 714–716 (2011).

Respondent contends that the statements are lawful and truthful because Respondent cannot make unilateral changes while in bargaining. Respondent is simply wrong in view of the above analysis of *Covanta Energy* and *Stone Container*.

Jefferson's August 25, 2010, statements to drivers that there would be no pay increases until the negotiations were done violated Section 8(a)(1) of the Act as alleged.

Complaint paragraph 6(b) alleges that on August 31, 2010, Respondent, through Director of Human Resources Mingo, at the Lake Oswego facility told employees that they would not receive customary wage increases until contract negotiations were completed and that any raises would not be paid retroactively if employees engaged in protected job actions such as a strike.

I have found that at a bargaining session on August 31, 2010, Mingo told Union Representative Bonner, in the presence of bargaining unit employees, that there would be no raises while bargaining was ongoing but raises would be paid retroactively when the contract was signed. However, Mingo added if the employee struck there would be no raises.

Mingo's statement that there would be no raises while bargaining was ongoing violated Section 8(a)(1) of the Act. *First Student*, supra; *Covanta Energy Corp.*, supra. Similarly, her statement that if the employee struck there would be no raises violated Section 8(a)(1) of the Act as threatening a reprisal for engaging in activity protected by Section 7 of the Act.

Respondent's contention that Mingo's statements are de minimus flies in the face of the multitude of other unfair labor practices that Respondent has committed and is rejected

Complaint paragraph 6(c) alleges that on October 15, 2010, Respondent, through Manager Jefferson, at the Lake Oswego facility told employees that monthly attendance bonuses would not be paid due to contract negotiations.

I have found Jefferson made these statements.

An employer violates Section 8(a)(1) of the Act if it tells employees they will lose a benefit because they are represented by a union. *Goya Foods of Florida,* 347 NLRB 1118, 1131 (2006); *VOCA Corp.,* 329 NLRB 591 (1999). I find Jefferson's statements violated Section 8(a)(1) of the Act as alleged.

Complaint paragraph 6(d) alleges that on August 20, 2010, Respondent, through Jourdan, at the Gresham facility told employees they were not getting raises because of the Union.

Complaint paragraph 6(e) alleges that on August 24, 2010, Respondent, through Jourdan, at the Gresham facility told employees that their wages were frozen during contract negotiations with the Union.

There is no dispute that at an August 19, 2010 meeting of drivers at the Gresham facility prior to the start of the school year, Jourdan told employees that they were not going to get a pay raise due to the Union and settling on a committee in Cincinnati. Likewise on August 24, 2010, Jourdan told employee Blacksmith that drivers would not be receiving a raise unless and until the parties reached a collective-bargaining agreement.

As noted above, such statements violate Section 8(a)(1) of the Act. I conclude Jourdan's statement to Blacksmith violated Section 8(a)(1) of the Act as alleged.

Complaint paragraph 6(f) alleges that on November 10, 2010, Respondent by letter told its employees at the Gresham facility that only nonunion participants in its Retirement Savings Plan would receive an employer matching contribution.

[50] GC Exh. 20.

The November 10, 2010 letter[51] from Respondent's president, Burtwistle, sent to Gresham unit drivers states:

> This letter is to inform you of important changes regarding the FirstGroup America, Inc. Retirement Savings Plan (the "Plan"). I am pleased to announce that the Company has reinstated the employer matching contribution and has implemented the contribution retroactively to January 2010.
>
> All non-union participants will receive an employer matching contribution of 100% of the before tax savings contributions that the participant contributes to the Plan.

As noted above, an employer violates Section 8(a)(1) of the Act if it tells employees they will lose a benefit because they are represented by a union. *Goya Foods of Florida,* 347 NLRB at 1131; *VOCA Corp.,* supra.

In seeking to distinguish the above cases and *Niagara Wires, Inc*., 240 NLRB 1326, 1327 (1979), Respondent contends that it has not run afoul of the Board's ruling, ". . . that the promulgation, maintenance, and publication of an employee benefit plan whose benefits are conditioned on the unrepresented status of the employees are themselves sufficient for finding an 8(a)(1) violation."

Respondent maintains that union employees were eligible to participate in its Retirement Savings Plan, but that they were ineligible to receive employer matching contributions. I fail to see how this limitation on the benefits of employer matching contributions is not a limitation on employer pension benefits conditioned on unrepresented status. In view of the numerous violations of Section 8(a)(1) and (5) of the Act, this violation cannot be viewed in isolation as a de minimus violation.

I find that Respondent, in limiting matching contributions to those in an unrepresented status violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent, First Student, Inc., is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Oregon School Employees Association is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since April 27, 2007, the Union has been the exclusive collective-bargaining representative of the following unit of employees:

> All full time and regular part time school bus operators and driver trainers employed by Respondent at its Molalla, Oregon, facility; but excluding all other employees, managers, technician in charge (mechanics), technicians (mechanics), clerical employees, and guards and supervisors as defined in the Act.

4. At all times since January 15, 2010, the Union was certified by the Board as the exclusive collective-bargaining representative of employees in the following unit:

> All full time and regular part time drivers employed out of Respondent's Lake Oswego, Oregon facility; but excluding all mechanics/technicians, office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act and all other employees.

5. At all times since June 18, 2010, the Union was certified as the exclusive collective-bargaining representative of employees in the following unit:

> All full time and regular part time bus drivers and driver trainers at Respondent's Gresham-Barlow School District Location; but excluding all other employees, including dispatchers, mechanic technicians, and guards, professional employees, and supervisors as defined in the Act.

6. By engaging in the following conduct, the Respondent committed unfair labor practices in violation of Section 8(a)(1) of the Act:

a. On or about August 25, 2010, by telling its employees at the Lake Oswego facility that they would not be receiving raises because Respondent did not want to give raises during contract negotiations.

b. On or about August 31, 2010, telling its employees at the Lake Oswego facility that they would not receive their customary wage increase until contract negotiations were completed and that any wage increase would not be paid retroactively if employees engaged in a strike.

c. On or about October 15, 2010, by telling its employees at the Lake Oswego facility that monthly attendance bonuses would not be paid due to contract negotiations.

d. On or about August 20, 2010, by telling its employees at the Gresham facility that they were not getting wage increases because of the Union.

e. On or about August 24, 2010, by telling its employees at the Gresham facility that their wages were frozen during contract negotiations with the Union.

f. On or about November 10, 2010, by informing its employees in the Gresham facility that only non-Union participants in its Retirement Savings Plan would receive an employer matching contribution.

7. By engaging in the following conduct, the Respondent committed unfair labor practices in violation of Section 8(a)(5) and (1) of the Act:

a. Since on or about July 1, 2010, by cancelling annual step increases for its employees in the Molalla bargaining unit.

b. Since about August 2010, by cancelling annual step increases for its employees in the Lake Oswego and Gresham bargaining units.

c. Since about October 15, 2010, by cancelling or delayed payment of monthly attendance bonuses to employees in the Lake Oswego bargaining unit.

d. From December 2, 2010, through August 1, 2011, by refusing to negotiate wages, benefits, and other economic matters in collective bargaining with the Union in the Gresham bargaining unit until agreement was reached on all noneconomic issues.

e. From between April 15, 2011, and August 1, 2011, by failing to meet at reasonable times and places for bargaining with the Union in the Gresham bargaining unit.

f. On about June 21, 2011, by unilaterally cancelling bar-

[51] GC Exh. 31.

gaining meetings scheduled for June 21–23, 2011.

g. From August 23, 2010, through April 17, 2011, the Union made various demands for relevant information including Respondent's step increases at its Gresham facility for the past 5 years, Respondent's service contracts with the Gresham, Sandy and West Linn-Wilsonville School Districts, and the number of employees in each of several job classifications in the Gresham bargaining unit. The Respondent did not reply to any of these requests nor did not provide the requested information in a timely manner.

THE REMEDY

The ActingGeneral Counsel seeks the remedy of an extension of the certification year at the Gresham facility in which the Respondent is ordered to bargain with the Union upon request, in good faith for "the period required by" *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962).

The Board has long held that where there is a finding that an employer, after a union's certification, has failed or refused to bargain in good faith with that union, the Board's remedy therefore ensures that the union has at least 1 year of good-faith bargaining during which its majority status cannot be questioned. *Mar-Jac Poultry, Inc.*, supra. The Board has also held that the certification year should be extended in cases in which the employer has engaged in pervasive and extensive illegal practices that commenced at the outset of bargaining. In re *Pratt Towers, Inc.,* 338 NLRB 61, 74 (2002); *Frank Leta Honda*, 321 NLRB 482 (1996).

In this case on June 18, 2010, the Union was certified as the exclusive collective-bargaining representative of employees at Respondent's Gresham facility. Bargaining did not commence until January 6, 2011. However, even prior to the commencement of bargaining, Respondent had embarked on a pervasive campaign of unfair labor practices which had as its object undermining the Union's support among its members by unilaterally ceasing wage step increases, matching pension contributions, and attendance bonuses. In addition on November 2, 2010, Respondent commenced a stonewalling of the Union's efforts to obtain relevant information from Respondent in order to preclude the Union from engaging in meaningful collective bargaining. Further on December 2, 2010, Respondent began a series of delays in bargaining that resulted in the cancellation of four bargaining sessions and the scheduling of only 11 sessions between December 2, 2010, and August 2, 2011.

The sessions that occurred from January 6, 2011, until August 2, 2011, were devoted entirely to Respondent's unlawful insistence upon bargaining first over noneconomic subjects.

I conclude that the Union is entitled to a period free from Respondent's failure to bargain in good faith and I recommend that the certification year be extended for one year from the date that Respondent complies with any Order issued by the Board. *Mar-Jac Poultry Co.,* supra; In re *Pratt Towers, Inc.,* 338 NLRB supra at 74 (2002).

The Respondent will be ordered to offer reinstatement to Rhandy Villanueva who it unlawfully terminated and make him whole for any wages or other rights and benefits he may have suffered as a result of the discrimination against him in accordance with the formula set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided for in *New Horizons for the Retarded,* 283 NLRB 1173 (1987), and *Jackson Kentucky River Medical Center,* 356 NLRB 6 (2010).

[Recommended order omitted from publication.]